of the master. But it is not true that the knowledge of any servant that a dog may follow or be with about the premises where he is employed as to the disposition of the dog, is to be imputed to the master. This is clear upon all the authorities."

Liability Under Statute.—In case of injury to sheep, under the English statutes, proof of the *scienter* is unnecessary: 26 & 27 Vict., c. 60; 28 & 29, c. 100. And under the statutes of some of the states of the Union it is unnecessary to aver and prove the *scienter* to recover for injuries inflicted by dogs: *Kertschacke* v. *Ludwig*, 28 Wis. 430; *Orney* v. *Roberts*, 51 N. H. 110; *Swift* v. *Applebone*, 23 Mich. 252; *Pressey* v. *Worth*, 3 Allen (Mass.) 19; *Gries* v. *Zeck*, 24 Ohio St. 329; *Woolf* v. *Chalker*, 31 Conn. 132. While knowledge is unnecessary to sustain the action, yet it is an important element in determining the damages: *Swift* v. *Applebone*, 23 Mich. 252. And the judgment will not be arrested because the declaration does not set forth that the acts were done contrary to the form of the statute: *Mitchell* v. *Clapp*, 12 Cush. (Mass.) 278. The right under the statute does not supersede the common-law action. The plaintiff must distinctly aver that the injury was caused by the dog and set it forth as a cause of action. In *Monroe* v. *Rose*, 38 Mich. 347, plaintiff was riding in a sulkey, leading a colt with one hand and driving with the other. Defendant's dog ran out and bit the colt, which jumped forward, put one foot through the wheel of the sulkey and overturned it, and injured the colt, sulkey, and plaintiff. The petition alleged that the dog "bit the colt," but there was no averment that he assaulted or bit plaintiff, or that he "otherwise injured him" him; *held*, that evidence of injury to plaintiff was inadmissible. See *Searles* v. *Ladd*, 123 Mass. 580.

In *LeForest* v. *Tolman*, 117 Mass. 109, the dog bit plaintiff in New Hampshire, but was owned by defendant, who resided and kept his dog in Massachusetts. There was no evidence of knowledge, etc., on part of defendant, nor was it contended that there was liability under the laws of New Hampshire; *held*, that under General Statutes of Mass., c. 88, § 59, the action would not lie.

EUGENE MCQUILLIN.

St. Louis, Mo.

Supreme Court of Pennsylvania.

BLUM v. ROSS.

Where an insolvent opened a store, and carried on business in the name of his wife, who signed, for goods purchased, certain notes subsequently paid with the proceeds of the business, but was not further known in the business, *held*, that the obvious use of the wife's name was for the purpose of defrauding creditors, and there was no error in the court below refusing to submit the case to a jury.

ERROR to Court of Common Pleas of Bradford county.

Feigned issue, by Daniel Blum against Lewis P. Ross, to determine the ownership of property taken in execution as the property of Joseph C. Blum. The said Joseph C. Blum failed in the

shoe business in Akron, Ohio, and his stock was purchased at sheriff's sale by his sister-in-law. In the following year he moved to Towanda, Pennsylvania, with his wife, who owned a house and lot there, previously given to her by Blum. The stock was purchased from his sister-in-law for $1,500, payable in three notes of $500 each, signed by Ida E. Blum. These notes were paid, at maturity, out of the proceeds of the store. Ida E. Blum testified that she knew nothing about the business, which was conducted by her husband, who was her agent. March 31, 1883, she presented her petition for a certificate entitling her to her separate earnings, under the Act of April 3, 1872, and a decree was so entered. September 20, 1884, Lewis P. Ross obtained judgment against Joseph C. Blum, and, in January, 1885, issued thereon a *fi. fa.*, under which the said stock was levied upon. The goods were claimed by Daniel Blum, by virtue of a sale by Ida E. Blum to him, January 26, 1885, for $2,700. The court instructed the jury to find for defendant. Verdict and judgment accordingly, whereupon plaintiff took this writ.

N. C. Elsbree, L. Elsbree, and *H. M. Williams,* for plaintiff in error.

S. W. Little, Wm. Little, and *H. J. Madill,* contra.

The opinion of the court was delivered by

GORDON, J.—Were we to reverse the judgment of the court below, we must needs make bad work with the law heretofore governing the marital relation; for not only, in that event, would we have to allow the wife to acquire and hold property on her personal credit, but also to have and own, even as against creditors, the labor and earnings of her husband. A very brief statement of the facts of the case will, we think, demonstrate that the action of the Common Pleas was correct, and that the evidence adduced by the plaintiff was not of such a character as required its submission to the jury. In the first place, when the goods in controversy were bought, Joseph C. Blum, the husband of Ida E. Blum, who was the vendor of the plaintiff, was insolvent. This insolvent husband bought these goods, as she alleges, as her agent, though, so far as the evidence is concerned, it does not appear that he had any previous authority so to act. She testifies that she did not know where the bargain was made; whether the

agreement was in writing or not, and if it were in writing she had not seen it. Nor was she consulted about the notes which were given for the goods, and had, indeed, nothing to do with the transaction but to sign those notes when they were presented to her for that purpose. Neither had she anything to do with the sale of the goods after the store was opened in her name, for that business was also conducted by her husband *as her agent.* So the notes were paid, not from any money or property advanced by her, but from the proceeds of the business. It thus appears that she had nothing in the transaction but her signature. Under such circumstances, it is clear that her application for the benefit of the Act of the 3d of April, 1872, has nothing to do with the case, for the effort here is not to protect her separate earnings from the grasp of his creditors, for she had no such earnings, but rather to appropriate his earnings to her own use, and thus prevent their application to his debts. To sanction an effort of this kind would be to extend the rights of married women much further than has as yet been done by this court. It is said, however, that she owned some property in her own right, and that this might be regarded as a foundation for her credit. It is true she owned a house and lot, but it is nowhere intimated that she obtained the goods on the credit of that estate. She asked for no such credit, nor does it appear that her alleged vendor so much as knew that she had an estate of any kind. If there is one thing settled in relation to this subject, it is that, while a married woman may buy goods on credit, yet, as was said Mr. Justice MERCUR, in *Seeds* v. *Kahler*, 76 Pa. 263, it must be on the credit of her separate estate, and, as against the creditors of her husband, she must affirmatively establish that fact. We agree that, where a *feme covert* owns property of value sufficient to serve as the foundation of a credit, direct proof that the credit was based upon it may not be necessary, for the jury may infer that fact from the circumstances surrounding the transaction: *Spering* v. *Laughlin*, 113 Pa. St. 209. But in the case before us there are no circumstances which would fairly warrant such an inference. Personally, as we have said, beyond the signing of the notes, she was not known in the business. The whole matter was conducted by her husbaud, and without the slightest reference to her separate estate; and that her name was used

merely as a cloak to cover the property from the claims of creditors is, from the evidence, so obvious that it cannot be overlooked or ignored.

We cannot, therefore, convict the court below of error in refusing to submit to the jury a case so wholly unsupported by facts.

The judgment is affirmed.

In this case, the questions of general interest are, can a married woman purchase on personal credit, goods and merchandise, to start in business? Can her insolvent husband carry on the business in her name, pay for the goods so purchased out of the proceeds of the business, and have his personal earnings in such business exempt from his creditors?

At common law a married woman could purchase on her personal credit, subject, however, to the right of her husband to divest her of the title; meaning that although she could not make a valid contract, yet, if the purchase was made, and the title vested in the wife, the common law *proprio vigore* would not, if the husband did not, disturb the purchase: Kelly Cont. M. W. 118; 4 Cruise Dig. 25.

Under the equity doctrine a married woman could own and possess a separate estate, and had power, when possessed therewith, to contract with respect thereto, and bind that estate to pay for other property, which would also become separate estate: Kelly Cont. M. W., ch. 8.

The enabling statutes converted this equity doctrine into statutory law and in many states went much farther: *Johnson* v. *Jones*, 12 B. Mon. 326; *Ballin* v. *Dillaye*, 37 N. Y. 35; *Hinckley* v. *Smith*, 51 N. Y. 21; *Brown* v. *Pendleton*, 10 P. L. Sm. (Pa.) 419. Under these statutes the adjudications are very conflicting upon the question, whether or not a married woman, not possessed with a separate estate, can purchase on her personal credit: *Lanier* v. *Ross*, 1 Dev. & Bat. Eq. 39; *Dunning* v. *Pike*, 46 Me. 461; *Carpenter* v. *Mitchell*, 40 Ill. 470; *Johnston* v. *Houston*, 47 Mo. 227; *Knapp* v. *Smith*, 27 N. Y. 277; *Shields* v. *Keys*, 24 Iowa 298; *Ratcliff* v. *Collins*, 35 Miss. 581; *Parterfield* v. *Butler*, 47 Miss. 165.

The following cases hold the affirmative of this question: *Abbey* v. *Deyo*, 44 Barb. 379; *Williamson* v. *Dodge*, 5 Hun. 498; *Allen* v. *Fuller*, 118 Mass. 402; *Spalding* v. *Day*, 10 Allen 98; *Larabee* v. *Dolly*, 99 Mass. 559; *Bugbee* v. *Blood*, 48 Vt. 500; *Trieber* v. *Stover*, 30 Ark. 729; *Knapp* v. *Smith*, 27 N. Y. 279; *Shields* v. *Keys*, 24 Iowa 313; *Mitchell* v. *Smith*, 32 Iowa 486; *Pemberton* v. *Johnson*, 46 Mo. 342; *Stewart* v. *Jenkins*, 6 Allen 300; *Brown* v. *Herman*, 14 Abb. Pr. 394; *Frecking* v. *Rolland*, 53 N. Y. 425; *Fisk* v. *Wright*, 47 Mo. 352; *Elder* v. *Cordray*, 54 Ill. 244; *Pringle* v. *Dunn*, 37 Wis. 468; *Huyler* v. *Atwood*, 11 C. E. Green 506; *Donavan's Appeal*, 41 Conn. 555; *Chamberland* v. *Robertson*, 31 Iowa 408. But in Pennsylvania it is held that a married woman cannot purchase on her personal credit: *Bucher* v. *Ream*, 18 Pa. 421; *Hallowell* v. *Harter*, 11 Casey 375, but see *Patterson* v. *Robinson*, 25 Pa. St. 82; *Curney* v. *Batt*, 53 Pa. St. 403; *Manderbach* v. *Mock*, 5 Casey 43.

Notwithstanding the enabling act in this state, as in other states, provides that all property acquired by a married woman during coverture by will, descent, deed of conveyance, *or otherwise* shall be her separate estate. The same rule was held in Maine: *Dunning* v. *Pike*, 46 Me. 463; and in Mississippi: *Doyle* v. *Orr*, 51 Miss. 232; *Whitworth* v. *Carter*, 43 Miss. 72; and in Indiana: *Light* v. *Lane*, 41 Ind. 542; *Kyger* v. *Skirt Co.*, 34 Ind. 249; but see *Johnson v. Chissom*, 14 Ind. 416; *Hough* v. *Blythe's Ex'rs.*, 20 Ind. 24, and in Kentucky: *Robinson* v. *Trustee*, 11 Bush 179; and in North Carolina: *Atkinson* v. *Richardson*, 74 N. C. 458; and formerly in Iowa: *Jones* v. *Crosthwait*, 17 Iowa 402; and in Illinois: *Carpenter* v. *Mitchell*, 50 Ill. 472; and in New Hampshire: *Ames* v. *Foster*, 42 N. H. 3810; and in Arkansas: *Stidman* v. *Matthews*, 29 Ark. 658; *Wood* v. *Terry*, 30 Ark. 391; and in Alabama: *Wilkinson* v. *Cheatham*, 45 Ala. 342.

It was held in Pennsylvania that a married woman could give her judgment bond for the purchase-money, or any part thereof, so as to charge the land purchased, and it would be valid: *Patterson* v. *Robinson*, 25 Pa. St. 81; *Brunner's Appeal*, 11 Wr. 67; *Ramborger* v. *Ingrahm*, 2 Id. 146; *Peacock* v. *Fly*, 2 H. 542; *Sawtelle's Appeal*, 34 Leg. Int. 349, on the ground that at common law she could be a grantee, and if the husband did not disagree, the purchase would be good: *Baxter* v. *Smith*, 6 Binn. 427; 4 Cruise Dig. 25; she had capacity to purchase: *Walker* v. *Coover*, 15 P. F. Smith 430; *Cowton* v. *Wickersham*, 4 P. F. S. 302; *Winch* v. *James*, 18 Id. 297; *Bortz* v. *Bortz*, 12 Wr. 382; *Vance* v. *Nagle*, 20 P. F. S. 176. And she could also receive the verbal assignment of bonds as collateral security: *Walker* v. *Coover*, *supra*; or a lease for a term of years: *Baxter* v. *Smith*, *supra*.

The statute does not abrogate this common-law capacity, but, on the contrary, seems to concede or admit it, by using the words *or otherwise* in designating the means by which a separate estate may be acquired. If, therefore, a married woman could purchase on her personal credit before the statute, and there is no express prohibition in the statute, why is it that she cannot do so after the enactment of that statute? That statute does not in express terms interfere with the common-law doctrine. The courts made the interference. The conclusion seems correct that, as she had the power before the statute, and the statute did not expressly interfere with that power, she still retains it. But the Pennsylvania courts have held otherwise, and it is presumed that, following the illogic of colonial times, the courts of this state construed the words "*or otherwise*" contained in the enabling statutes to refer to the preceding terms "will," "descent," and "conveyance," on the doctrine of *ejusdem generis*, and did not allow these two words to enlarge the scope and operation of the act, as was the intention of the legislature. The intention of the legislature was to protect the property of a married woman, no matter how acquired, if no fraud or injury ensued in the acquirement. Early in its period this court, like some other courts, adopted, in the construction of these statutes, the American doctrine first advanced in South Carolina and subsequently expounded by Chancellor KENT, namely, that a married woman has no power over her separate estate but such as is given by the instrument creating it, and she cannot therefore charge the estate with her debts or contracts unless the instrument ex-

pressly permit it. Kelly, Cont. M. W. 258, 491. That it was the separate estate and not her humanity which created her power to contract; that she had no capacity without such estate, and could only acquire it in the way pointed out by the statute, and not by personal credit.

The next question is the right of the husband's creditors to reach the fruits of his services in the management, conduct of, or concerning her separate business or property.

The court in the principal case held the negative on this question, on the ground, as stated in the opinion, that "the whole matter was conducted by her husband, and without the slightest reference to her separate estate; and that her name was used (in the business) merely as a cloak to cover the property from the claims of creditors." It is, in the principal case, a fact that at the time of the purchase of the goods, and the giving of her notes therefor, she was possessed of a separate estate, and the case of *Spering* v. *Laughlin*, 113 Pa. St. 209, holds that when this fact exists, direct proof that the credit was based upon the separate estate is not necessary. The following cases hold that if the wife is possessed of a separate estate she can purchase on her personal credit, and the property so acquired will be protected from the claims of her husband's creditors: *Brown* v. *Pendleton*, 10 P. F. S. 419; *Silven Ex.* v. *Porter*, 24 Id. 448; *Wieman* v. *Anderson*, 6 Wr. 311; *Kepler* v. *Davis*, 30 P. F. S. 153; *Bucher* v. *Ream*, 18 Id. 421; *Rush* v. *Vought*, 5 Id. 437; even if the thing purchased be merchandise, to be used in trade: *Wieman* v. *Anderson, supra; Welch* v. *Kline*, 7 P. F. S. 428; or other property: *Conrad* v. *Shome*, 8 Wr. 193; and the products and fruits of the same be obtained through and by the assistance, in whole or in part, of the husband: *Musser* v. *Gardner*, 16 P. F. S. 242. If this is a correct conclusion from those cases, then the conclusion in the principal case is erroneous. And, on the other hand, if these cases, and the current of the decisions in this state follow the American doctrine as above stated, then the principal case is in accord with previous adjudications, and the rule is that a married woman can only contract with respect to and upon the faith and credit of her separate estate: Kelly, Cont. M. W. 490.

If the American rule prevails, and a married woman cannot purchase a stock of goods on credit, then the other question whether or not her husband can devote his services to her business exempt from his creditors cannot cut any figure, because the purchase would be his purchase, as at common law, and hence subject to his creditors. And, on the other hand, if she can purchase, or if there is no question about the purchase, then the other question arises. On this the weight of authority establishes the rule that creditors of the husband have no power to reach the fruits of his services bestowed by him gratuitously in good faith for his wife in the management of, or concerning her separate business or property, and cannot acquire any rights against the wife or her property or her business on account of such services, nor reach any part of his earnings from such labor given to his wife before the same becomes vested in him: *Abbey* v. *Deyo*, 44 N. Y. 343; *Buckley* v. *Wells*, 33 N. Y. 518; *Wartman* v. *Price*, 47 Ill. 22; *Glidden* v. *Taylor*, 16 O. S. T. 509; *National Bank* v. *Sprague*, 5 C. E. Green 13; *O'Leary* v. *Walter*, 10 Abb. Pr. 439; *Webster* v. *Hildreth*, 33 Vt. 457; *White* v. *Hildreth*, 32 Vt.

265; *Goss* v. *Cahill*, 42 Barb. 310; *Fiske* v. *Bailey*, 51 N. Y. 150; see *Feller* v. *Alden*, 23 Wis. 301. On the principle that a creditor has no power to reach, direct, or control the future labors or contracts relating to the future of his debtor, but only that which his debtor actually acquires: *Webster* v. *Hildreth*, *supra*; *Fiske* v. *Bailey*, *supra*, and the further ground that a wife (nor any one) cannot be compelled to pay for labor or services which the husband or laborer agreed should not be paid for. But *Penn* v. *Whiteheads*, 12 Gratt. 74; *Wilson* v. *Loomis*, 55 Ill. 352, and the Pennsylvania cases (see *Bucher* v. *Ream*, *supra*) held that a husband has no power or right to devote his labor or skill to the exclusive use of his wife in her separate business or separate estate, but that all acquisitions on account of the husband's labor must be appropriated to pay his creditors. While some of the cases do not positively hold the doctrine that the creditors of the husband cannot touch the acquisition or fruits of his labor, skill, etc., gratuitously bestowed in his wife's business or business conducted in her name, the conclusion that his creditors cannot touch such acquisitions is inevitable from the reasons given in those cases: *Rankin* v. *West*, 25 Mich. 195; *Tillman* v. *Shackleton*, 15 Id. 447; *Duncan* v. *Rosselle*, 15 Iowa 501; *Mitchell* v. *Sawyer*, 21 Id. 582; *Burger* v. *White*, 2 Bosw. 92; *Dean* v. *Bailey*, 50 Ill. 481; *Elder* v. *Cordray*, 54 Id. 244; *Bridgeford* v. *Riddell*, 55 Id. 261; *Bank* v. *Sprague*, 5 Green 13; *Skillman* v. *Skillman*, 2 Beas. 403; *Johnson* v. *Vail*, 1 McCarter 423. And this rule applies no matter if the husband is insolvent or a bankrupt: *O'Leary* v. *Walter*, 10 Abb. Pr. 446; *Abbey* v. *Deyo*, 44 Barb. 380; *Buckley* v. *Wells*, 33 N. Y. 520; *Gage* v. *Dauchey*, 34 N. Y. 297; *Cooper* v. *Ham*, 49 Ind. 394.

The cases of *Spering* v. *Laughlin*, 113 Pa. St. 213, and *Leeds* v. *Kahler*, 76 Pa. St. 262, affirmatively assert the doctrine that a husband can give to his wife his labor and skill in conducting her business, and his creditors cannot touch the fruits or product of that labor and skill so produced, and the cases of *Welch* v. *Kline*, 57 Pa. St. 428, and *Manderbach* v. *Mock*, 29 Pa. St. 45, and *Weiman* v. *Anderson*, 6 Wr. 311, are in conflict in principle with the case to which this is a note, and, indeed, are in harmony with the cases above given as adverse to the ruling in this case.

It remains to be stated that the Pennsylvania statute is not different, as to the questions involved, from the statutes of the states where the adverse decisions have been made: Kelly, Cont. M. W. ch. 9, *et seq.*

The questions involved in the principal case are very learnedly discussed in American Law Register, 1885, pp. 130, 353, 470

JNO. F. KELLY.

Bellaire, Ohio.

Since the decision of the above case a new married woman's act has been passed by the legislature of Pennsylvania, the first section of which provides that marriage "shall not be held to impose any disability on or incapacity in a married woman as to the acquisition, ownership, possession, control, use or disposition of property of any kind in any trade or business in which she may engage." * * * *Provided*, however, "a married woman shall have no power to mortgage or convey her real estate unless her husband join in such mortgage or conveyance;" and by the second section, "a married woman shall be capable of entering into and rendering herself liable upon any contract

relating to any trade or business in which she may engage, or for necessaries * * * in all respects as if she were a *feme sole* * * * *provided*, however, that nothing in this or the preceding section shall enable a married woman to become accommodation endorser, guarantee, or surety for another." Act June 3, 1887, P. L. 332. ED.

Supreme Court of Tennessee.

CARVER GIN AND MACHINE CO. *v.* BANNON.

A partnership may convey all its assets in payment of an individual creditor of one of the members of the firm, even conveying it in trust for that purpose, if there is no fraudulent intent in fact.

It is only through the lien a partner has on the partnership assets that the firm creditors may secure a preference in the firm assets over the individual creditors; but if the partner has destroyed or parted with that lien the right of the firm creditors is lost.

APPEAL from the Chancery Court of Shelby county.

Wm. M. Randolph, for complainant.

Gautt & Patterson and *H. C. Warriner*, for defendant.

The opinion of the court was delivered by

CALDWELL, J.—Under the firm name and style of F. J. Bannon & Co., Albert Paine and F. J. Bannon were partners in the ownership and operation of a cotton-gin in the city of Memphis. In the course of the business, for partnership purposes and in the name of the firm, they contracted certain debts with the Carver Gin and Machine Company, evidenced by several acceptances. Subsequently Albert Paine, F. J. Bannon, and Margaret Bannon, in their individual names, executed their joint notes to Mr. Gavin for $750 each, and on the same day Paine and Bannon conveyed their partnership property in trust to Sullivan to secure the judgment of [or] the two notes to Gavin. Some ten months thereafter the Carver Gin and Machine Company filed this bill to set aside the trust conveyance as a fraud upon the partnership creditors, and to subject the property herein described to the payment of said obligations. There is no proof of an intention to defraud the creditors of the firm, and we think the conveyance is not fraudulent in law as against such creditors. It is true that the effect of the conveyance is to ap-